

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

TRUDI HANSEN,

Plaintiff,

2:06-CV-01509-ECR-RJJ

MINUTES OF THE COURT

vs.

DATE: March 6, 2009

MICHAEL J. ASTRUE,
COMMISSIONER OF SOCIAL SECURITY
ADMINISTRATION,

Defendant

PRESENT:	EDWARD C. REED, JR.	U. S. DISTRICT JUDGE
Deputy Clerk:	COLLEEN LARSEN	Reporter: NONE APPEARING
Counsel for Plaintiff(s)	NONE APPEARING	
Counsel for Defendant(s)	NONE APPEARING	

MINUTE ORDER IN CHAMBERS

On January 26, 2009, the Magistrate Judge filed a Report and Recommendation (#22) with respect to Plaintiff's Motion for Reversal (#16). Defendant opposed the motion (#18) and Plaintiff replied (#20). Plaintiff has filed an objection (#23) to the Magistrate Judge's Report.

The Magistrate Judge determined that the ALJ failed to provide clear and convincing reasons for discounting opinion and testimony evidence by Hansen, and that the ALJ committed legal error when calculating Plaintiff's residual functional capacity and step five of the disability claim analysis. The Magistrate Judge determined, however, that "the record is not fully developed and it is not clear whether the ALJ would be required to award benefits to Hansen had her testimony been credited." (R&R 10 (#22).) On this basis, the Magistrate Judge recommended that Plaintiff's Motion for Reversal (#16) be granted, and the matter be remanded to the ALJ for further proceedings. Plaintiff objects, arguing that the matter should instead be remanded for an award of benefits, with no further proceedings.

The Magistrate Judge's Report and Recommendation (#16) is well taken. It is within the discretion of the Court to determine whether to remand the case for further proceedings or for an award of benefits, as Plaintiff concedes. Reddick v. Chater, 157 F.3d 715, 728 (9th Cir. 1998). The

Magistrate Judge's exercise of that discretion in this case to remand for further proceedings is neither clearly erroneous nor contrary to law.

IT IS, THEREFORE, HEREBY ORDERED that the Report and Recommendation (#22) is **APPROVED** and **ADOPTED**.

IT IS FURTHER ORDERED that Plaintiff's Motion for Reversal (#16) is **GRANTED** on the following basis: the matter is remanded to the Administrative Law Judge to redetermine Plaintiff's residual functional capacity and step five of the disability claim analysis, pursuant to the Magistrate Judge's Report and Recommendation (#22).

LANCE S. WILSON, CLERK

By /s/
Deputy Clerk